Filed 7/13/20 In re Z.G. CA4/2

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re Z.G. et al., Persons Coming Under the Juvenile Court Law.	
SAN BERNARDINO COUNTY CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. R.B., Defendant and Appellant.	E074009 (Super.Ct.Nos. J281811, J281812 & J281813) OPINION

APPEAL from the Superior Court of San Bernardino County. Erin K. Alexander, Judge. Affirmed with directions.

Jamie A. Moran, under appointment by the Court of Appeal, for Defendant and Appellant.

Michelle D. Blakemore, County Counsel, and Pamela J. Walls, Deputy County Counsel, for Plaintiff and Respondent.

R.B. (mother) appeals from a juvenile court's disposition order removing her children, Zy.G, Ze.G., and Zo.G. (the children), from her custody. She contends the evidence was insufficient to support removal. She also raises an issue of lack of compliance with the Indian Child Welfare Act of 1978, or ICWA (25 U.S.C. § 1901 et seq.). We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On July 24, 2019, the San Bernardino County Children and Family Services (CFS) filed a Welfare and Institutions Code[1] section 300 petition on behalf of the children.[2] At the time, Zy.G. was six years old, Ze.G, was five years old, and Zo.G. was 10 months old. The petition alleged that the children came within section 300, subdivisions (b) (failure to protect) and (j) (abuse of sibling). The petition specifically alleged that mother had a history of substance abuse, and that she and the children's father, L.G. (father),[3] had a history of domestic violence. The petition also alleged that, in 2013, Zy.G. was removed from mother's care due to substance abuse, but mother successfully engaged in services and reunified with her. Additionally, in 2014, Ze.G. became a dependent of the

[1] All further statutory references will be to the Welfare and Institutions Code, unless otherwise noted.

[2] CFS filed separate petitions for the children, but they contained the same allegations. Thus, we will refer to them collectively as "the petition" (singular) in this opinion.

[3] Father is not a party to this appeal. Thus, this opinion will focus on the allegations regarding mother.

court due to concerns raised in Zy.G.'s dependency case; however, mother engaged in family maintenance services, and the court dismissed the matter in 2015.

Detention

The social worker filed a detention report and reported that mother went to the hospital on June 12, 2019, for a procedure and tested positive for methamphetamine. The social worker interviewed mother, who denied current substance use. However, mother admitted that she relapsed on June 10, 2019, because she was under a lot of stress before her procedure. She said that she had been sober for one year, prior to relapsing. Mother said she started using drugs eight years ago, but claimed she was "back on track with her sobriety." The social worker had mother and father test on June 25, 2019, and father tested positive for marijuana and amphetamines, while mother tested negative for all substances.

Regarding the prior dependencies, the social worker reported that, on April 29, 2013, allegations under section 300, subdivision (b), were sustained against mother with regard to Zy.G., as mother and Zy.G. tested positive for methamphetamine at the time of Zy.G.'s birth. Mother engaged in services, including substance abuse treatment, and reunified with Zy.G. on October 23, 2014. On February 28, 2018, section 300, subdivision (b) allegations were sustained against mother with regard to Ze.G., and mother was provided with family maintenance services. She completed the case plan requirements, and the court terminated the dependency on May 14, 2015.

The court held a detention hearing on July 25, 2019. At the outset of the hearing, the court asked mother and father (the parents) if they had Native American ancestry.

They both said no. They filled out ICWA inquiry forms stating the same. The court continued the hearing to the next day, at which time it detained the children from father, but continued them in mother's custody under a family maintenance plan, on the condition that father move out of the home. The court ordered mother to submit to random substance abuse testing, with the warning that failure to test would be considered a positive test. The court also confirmed with the parents that they did not have Native American ancestry.

On August 16, 2019, CFS filed a first amended petition. The petition was amended to allege that mother's substance abuse issues were ongoing. Furthermore, the allegation that mother had participated in services with regard to Zy.G.'s prior dependency was deleted. Instead, the petition simply alleged that the court dismissed the dependency on May 14, 2015.

The social worker filed an amended detention report stating that mother missed her intake assessment appointment for drug treatment services because she allegedly had a doctor's appointment. The social worker called mother to discuss her missed appointment and instructed her to have an on-demand drug test that day (August 9, 2019). Mother complied and tested positive for marijuana.

Furthermore, the social worker reported that the maternal grandmother (the MG) was not approved for visits with Zy.G., and mother was advised to not allow her to stay in the MG's home; however, mother disregarded that advisement. The social worker went to the MG's home and was confronted by the maternal aunt. As the social worker was advising the maternal aunt about the upcoming court hearing, the MG began to

scream and rant profanities in front of Zy.G. Due to the lack of compliance with the original safety plan, positive drug tests, and mother allowing Zy.G. to stay at the MG's home, the social worker decided to recommend removal of the children from mother's custody.

Additionally, the social worker interviewed the maternal grandparents about Native American ancestry, and they both denied any tribal affiliation. The maternal grandfather filled out an ICWA inquiry form and indicated he did not have Native American ancestry and the children did not have other relatives with Native American ancestry. The maternal aunt also filed out an ICWA inquiry form indicating she had no Native American ancestry and the children had no relatives with Native American ancestry.

The court held another detention hearing on August 19, 2019. The MG filed an ICWA Inquiry form that day and indicated she did not have Native American ancestry, but said the children had other relatives with Native American ancestry. However, she wrote on the form, "But not enough." At the hearing, the court noted that the parents said they did not have Native American ancestry, so it asked the MG what she meant by her comment on the form. The MG said, "[T]he grandparents to the kids, the dad and the mom have Indian in them, but they already checked." She then said she believed father had Native American ancestry. She added, "But the reason why I know is from the last time Leslie, the social worker, had them tested but – and sent paperwork in and the family didn't have enough on [father's] side for the girls to have enough in them." The court then ordered CFS to see if ICWA noticing was done in the prior dependency cases.

It proceeded to detain the children in the custody of CFS and set a jurisdiction/disposition hearing.

Jurisdiction/Disposition

The social worker filed a jurisdiction/disposition report on September 4, 2019, recommending that the court sustain the amended petition, remove the children from mother's custody, and provide reunification services. The social worker reported the details concerning mother's relapse on June 12, 2019. Mother was feeling depressed about her decision to abort her latest child. She had 10 children and did not want another one. When she was admitted to the hospital for her abortion, she tested positive for methamphetamine. Mother admitted to using methamphetamine on June 10, 2019, but also disclosed that she had previously relapsed twice. At the time of the latest relapse, Zo.G. and Ze.G. lived with her, and Zy.G. lived with the MG.

The social worker also reported that mother was made aware of a Children and Family Team meeting on August 22, 2019, to discuss future services for the family and visitation. However, she failed to appear at the meeting. Mother said she had to meet with her probation officer and that she would be available by phone. The social worker attempted to reach her several times during the meeting, but mother did not answer, and she did not return the call until later that day.

Furthermore, the social worker reported that mother had an ongoing problem with substance abuse and was unable to provide housing or a stable environment for the children. She was currently renting a room in a friend's home. The social worker

reported that mother was recently incarcerated at West Valley Detention Center on August 27, 2019, but was currently out on bail.[4]

The court held a jurisdiction/disposition hearing on September 10, 2019. At the outset, the court questioned father about his Indian heritage. Father again said he did not have any. The court said it understood that he claimed it in a prior case, and father replied, "Yeah. I wasn't too sure. I don't think it's from California though." The court informed him it could be any tribe in the United States. Father said his maternal grandmother was from Oklahoma, but he did not know what tribe she might be affiliated with. The court asked for his grandmother's name and birthdate, but he did not know her birthdate, and she was deceased. The court ordered the parents to cooperate with trying to get the relative information and asked CFS to look into the prior case, since it believed ICWA noticing was previously sent. The court then noted the parents had requested mediation to be set, so it ordered mediation for October 22, 2019, and set a contested jurisdiction/disposition hearing for October 29, 2019. Mediation was held on October 22, 2019, and mother appeared but was angry and frustrated. She was unwilling to participate and terminated the meeting early.

On October 29, 2019, the court held a contested jurisdiction/disposition hearing and addressed ICWA first. County counsel said CFS attempted to find information based on father's statement that he may have Indian heritage with an unknown tribe, but it was not able to gather additional information. Thus, CFS did not believe ICWA applied

[4] The record does not disclose why mother was incarcerated.

because of the lack of an identifying relative or tribe. County counsel stated that the social worker reviewed the record from the previous dependency, and there was no ICWA filed or any information regarding ICWA. The court then stated it had no reasonable belief that ICWA applied, but made that finding without prejudice, so that if father was able to obtain any additional information, they could try and find out any tribal affiliation. Father said he had not had any access to the phone since he was incarcerated. The court confirmed that he did not know what tribe he might be affiliated with. It then proceeded with the rest of the hearing.

Mother testified on her own behalf and said she did not agree with the social worker's assessment that she had an ongoing problem with substance abuse. She said she only "screwed up" one time, in March 2013. She testified that she subsequently completed a treatment program and did aftercare services, which she was still attending three or four times a week. Mother later clarified that the relapse in 2013 was prior to her last dependency, but she had since relapsed twice. She agreed that she had a criminal history, but denied having domestic violence issues with father. Mother agreed that she had a prior dependency case in 2015 and completed her services in that case. She said that she was currently enrolled in a parenting program through the probation department, as well as a substance abuse program.

The court found that the children came within the provisions of section 300, subdivision (b), specifically finding true the allegations that mother had an ongoing history of substance abuse, and that Zy.G. and Ze.G. were removed from her in prior dependency cases, which were later dismissed. The court dismissed the domestic

violence allegation. It adopted the social worker's recommendations, including that the children did not come under ICWA, that continuance in mother's home was contrary to the children's welfare, and that there was clear and convincing evidence the children should be removed from mother's custody. The court noted its concerns that mother had relapsed, that CFS tried to institute a family maintenance plan but she did not cooperate, and that she had been difficult to work with. The court stated that mother was going to have to show stability in her sobriety before the children could be returned to her and that she would need to cooperate with CFS. It declared the children dependents, removed them from the parents' custody, and placed them in the custody of CFS. The court ordered reunification services for mother, as well as supervised visitation.

DISCUSSION

I. The Evidence Was Sufficient to Remove the Children from Mother's Custody

Mother argues the court's order removing the children from her custody was not supported by substantial evidence. She asserts that she had two prior dependencies involving Ze.G. and Zy.G. and was able to successfully complete her plans and have the cases terminated. She contends there was no clear and convincing evidence that she would not make similar progress in the instant case. She states that she was willing to participate in case plan services, as evidenced by her testimony that she was already participating in parenting education and an outpatient treatment program. Thus, she argues the children should not have removed from her custody. We disagree.

To remove a child from a parent's custody, the juvenile court must find by clear and convincing evidence that (1) there is a substantial danger to the child's physical

health, safety, protection, or physical or emotional well-being if the child is returned home, and (2) there is no reasonable means by which the child can be protected without removal. (§ 361, subd. (c)(1).) "The jurisdictional findings are prima facie evidence that the child cannot safely remain in the home." (*In re Cole C.* (2009) 174 Cal.App.4th 900, 917.) "The parent need not be dangerous and the child need not have been actually harmed for removal to be appropriate. The focus of the statute is on averting harm to the child. [Citations.] In this regard, the court may consider the parent's past conduct as well as present circumstances." (*Ibid*.) "We review a dispositional order removing a child from parental custody for substantial evidence." (*In re D.G.* (2012) 208 Cal.App.4th 1562, 1574.) " 'In juvenile cases, as in other areas of the law, the power of an appellate court asked to assess the sufficiency of the evidence begins and ends with a determination as to whether or not there is any substantial evidence, whether or not contradicted, which will support the conclusion of the trier of fact. All conflicts must be resolved in favor of the respondent and all legitimate inferences indulged in to uphold the verdict, if possible. Where there is more than one inference which can reasonably be deduced from the facts, the appellate court is without power to substitute its deductions for those of the trier of fact . . . .' " (*In re Jason L.* (1990) 222 Cal.App.3d 1206, 1214.)

In this case, there is substantial evidence to support the juvenile court's determination that the children could not safely remain in mother's custody. The evidence showed that she started using drugs approximately eight years ago. She had two prior dependency cases where her children were removed because of substance abuse. Zy.G. was removed from mother's custody because she and mother tested

positive for methamphetamine at the time of her birth. Although mother denied current substance use, she relapsed on methamphetamine on June 10, 2019. She reported that prior to that relapse, she had been sober for one year. She also admitted that she had previously relapsed two other times. We note that all these relapses occurred *after* she had already completed a treatment plan. Moreover, she relapsed despite, by her own account, currently attending aftercare services three to four times a week.

Furthermore, mother did not appear to be concerned about her current substance use. She missed her intake assessment appointment for drug treatment services. On August 9, 2019, the social worker called to discuss her missed appointment and had her drug test that day. Mother tested positive for marijuana. On September 27, 2019, mother missed her drug test, after previously being advised that a failure to test would be deemed a positive result.

We further note that mother was uncooperative with CFS. She was advised to not allow Zy.G. to stay in the MG's home; however, she disregarded that advisement and allowed Zy.G. to live with the MG. Mother attended the court-ordered mediation, but was angry and refused to participate. Moreover, at the jurisdiction hearing, she told the court she did not want to "deal with" the social worker anymore, since they had a lot of conflict.

In view of mother's years-long struggle with substance abuse, her past and current relapses, and her history of not cooperating with CFS's efforts in trying to assist her, the court was properly concerned with her sobriety and ability to properly care for the

children. We conclude there was sufficient evidence to support its decision to remove the children from mother's custody.

II. CFS Properly Complied with ICWA

Mother contends that CFS did not properly inquire about the children's Indian ancestry since it failed to obtain all the information about the family history. She also argues that the ICWA notices sent out were incomplete. She points out that CFS listed the "San Manuel Band of Mission Indians, Serrano" on the ICWA notice forms, but did not send any notice to that tribe or to any other Indian group with a Serrano population. Mother further asserts the court should not have placed the burden on father to seek out additional information about his Indian heritage. Therefore, she argues the case should be remanded for the lower court to order CFS to correct the defects in the notice and continue to seek information from the children's paternal relatives. We conclude that CFS complied with its ICWA duties, and no remand is needed.

A. *Requirements Under ICWA*

"Congress enacted ICWA in 1978 to address concerns regarding the separation of Indian children from their tribes through adoption or foster care placement, usually in non-Indian homes. [Citation.] ICWA established minimum standards for state courts to follow before removing Indian children from their families and placing them in foster care or adoptive homes. [Citations.] In 2006, California adopted various procedural and substantive provisions of ICWA. [Citation.] In 2016, new federal regulations were adopted concerning ICWA compliance. [Citation.] Following the enactment of the federal regulations, California made conforming amendments to its statutes, including

portions of the Welfare and Institutions Code related to ICWA notice and inquiry requirements. [Citations.] Those changes became effective January 1, 2019 [citation], and govern here." (*In re D.S.* (2020) 46 Cal.App.5th 1041, 1048, fn. omitted (*D.S.*).)

"An 'Indian child' is defined in the same manner as under federal law, i.e., as 'any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe . . . .' [Citations.] The Agency and the juvenile court have 'an affirmative and continuing duty' in every dependency proceeding to determine whether ICWA applies. [Citations.] [¶] Section 224.2, subdivision (b) specifies that once a child is placed into the temporary custody of a county welfare department, such as the Agency, the duty to inquire 'includes, but is not limited to, asking the child, parents, legal guardian, Indian custodian, extended family members, others who have an interest in the child, and the party reporting child abuse or neglect, whether the child is, or may be, an Indian child.' When the Agency has 'reason to believe' that an Indian child is involved, further inquiry regarding the possible Indian status of the child is required. [Citation.] The required further inquiry includes (1) interviewing the parents and extended family members; (2) contacting the Bureau of Indian Affairs and State Department of Social Services; and (3) contacting tribes the child may be affiliated with, and anyone else, that might have information regarding the child's membership or eligibility in a tribe." (*D.S.*, *supra*, 46 Cal.App.5th at pp. 1048-1049, fns. omitted.) "The sharing of information with tribes at this inquiry stage is distinct from formal ICWA notice, which requires a 'reason

to know'—rather than a 'reason to believe'—that the child is an Indian child." (*Id*. at p. 1049.)

The juvenile court may "make a finding that ICWA does *not* apply because the Agency's further inquiry and due diligence was 'proper and adequate' but no 'reason to know' whether the child is an Indian child was discovered. [Citation.] Even if the court makes this finding, the Agency and the court have a continuing duty under ICWA, and the court 'shall reverse its determination if it subsequently receives information providing reason to believe that the child is an Indian child and order the social worker or probation officer to conduct further inquiry.' " (*D.S.*, *supra*, 46 Cal.App.5th at p. 1050.) "If the inquiry establishes a reason to know an Indian child is involved, notice must be provided to the pertinent tribes." (*Ibid*.)

"The juvenile court must determine whether proper notice was given under ICWA and whether ICWA applies to the proceedings. [Citation.] [¶] We review the trial court's findings for substantial evidence. [Citation.] ' "On review of the sufficiency of the evidence, we presume in favor of the order, considering the evidence in the light most favorable to the prevailing party, giving the prevailing party the benefit of every reasonable inference and resolving all conflicts in support of the order." [Citation.]' " (*In re Charlotte V.* (2016) 6 Cal.App.5th 51, 57 (*Charlotte V.*).)

B. *CFS Complied With its Duties*

Mother contends that CFS fell short in its inquiry and failed to obtain all the information about father's family history. She does not address the issue of whether the court had reason to believe an Indian child was involved, but just assumes that CFS was

required to send notice. (See § 224.2, subd. (e).) Thus, the crux of her claim is that CFS sent notice to the Bureau of Indian Affairs and the Department of the Interior but did not send notice to any Indian tribes. She also contends that the notice sent was incomplete.

As discussed *ante*, "section 224.2 creates three distinct duties regarding ICWA in dependency proceedings. First, from the Agency's initial contact with a minor and his family, the statute imposes a duty of inquiry to ask all involved persons whether the child may be an Indian child. [Citation.] Second, if that initial inquiry creates a 'reason to *believe*' the child is an Indian child, then the Agency 'shall make *further inquiry* regarding the possible Indian status of the child, and shall make that inquiry as soon as practicable.' [Citation.] Third, if that further inquiry results in a reason to *know* the child is an Indian child, then the formal notice requirements of section 224.3 apply." (*D.S.*, *supra*, 46 Cal.App.5th at p. 1052; see § 224.2.)

The court here had no reason to know the children were Indian children. Both mother and father denied having Indian ancestry several times. The maternal aunt indicated she had no Native American ancestry, and the children had no relatives with Native American ancestry. The social worker interviewed the maternal grandparents, and both denied any tribal affiliations. However, the MG later indicated the children had other relatives with Native American ancestry. She told the court that the social worker in one of the prior dependencies sent ICWA paperwork in, but it was determined the children did not have "enough" Indian in them.

At the jurisdiction/disposition hearing on September 10, 2019, father again denied having any Indian ancestry. When the court said it understood that he claimed it in a

prior case, father said, "Yeah. I wasn't too sure." He thought his maternal grandmother from Oklahoma might have Indian ancestry but did not know what tribe she might be affiliated with. He did not know her birthdate, and said she was deceased. Information which is vague, attenuated, and speculative is insufficient to give the dependency court any reason to believe the children might be Indian children. (*In re J.D.* (2010) 189 Cal.App.4th 118, 124-125.) Although the information provided was extremely vague, CFS nevertheless made further inquiry. (§ 224.2, subd. (e).) The court ordered the parents to cooperate with trying to get the relative information and for CFS to see if ICWA notices were previously sent.

At the following hearing, county counsel stated the social worker reviewed the record from the previous dependency and reported there was no ICWA filed or any information regarding ICWA. No other relative information was presented by the parents. Thus, the court stated it had no reasonable belief that ICWA applied and adopted the social worker's recommended finding that ICWA did not apply. The court's finding that ICWA did not apply was proper since CFS made a further inquiry, but no "reason to know" whether the children were Indian children was discovered. (*D.S.*, *supra*, 46 Cal.App.5th at p. 1050; see § 224.2.) Consequently, no notice was required to be provided to any tribes, especially since no tribes had been identified. (*D.S.*, *supra*, 46 Cal.App.5th at p. 1050; see § 224.3, subds. (a), (b).)

Mother claims CFS sent out ICWA notice that was incomplete and points out that it failed to send notice to any Indian tribes, particularly the San Manuel Band of Mission Indians, Serrano, which was listed in the ICWA notice form. We acknowledge that the

record contains a copy of an ICWA notice that lists the San Manuel Band of Mission Indians as the tribe of the paternal great grandparents. It appears this notice form was prepared by the social worker for the contested jurisdiction/disposition hearing, since it was dated with the same date as the hearing (October 29, 2019). However, it is unclear why the notice listed the San Manuel Band of Mission Indians, since no tribe was ever identified. It is also unclear if or why the notice was actually sent. The court found that ICWA did not apply; thus, CFS was not required to send ICWA notice. Accordingly, mother's claims of incomplete notice and the failure to send notice to any Indian tribes are immaterial.

Mother acknowledges that the court found, without prejudice, that ICWA did not apply, and points out that the minute order incorrectly indicates that the finding was with prejudice. She further contends the court should not have placed the burden on father to seek out additional information about his Indian heritage. The minute order should be corrected to show the finding was without prejudice, and we can correct this apparently clerical error on appeal. (*People v. Mitchell* (2001) 26 Cal.4th 181, 185.) As to mother's other claim, the court did not place the burden on father to seek out additional information. Rather, the court stated that it was making its ICWA finding without prejudice, "so that *if* Father's able to obtain any additional information . . . we can try to find out tribal affiliation." (Italics added.)

Considering the evidence in the light most favorable to the prevailing party, giving the prevailing party the benefit of every reasonable inference, and resolving all conflicts

in support of the order, as we must, we conclude that CFS complied with its duties and properly found ICWA did not apply. (See *Charlotte V., supra,* 6 Cal.App.5th at p. 57.)

DISPOSITION

The superior court clerk is directed to amend the minute order from the October 29, 2019 hearing to reflect the court found, without prejudice, that ICWA did not apply. In all other respects, the judgment is affirmed.

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FIELDS
J.

We concur:

MILLER
Acting P. J.

CODRINGTON
J.